

REMARKS

I. Status of the Claims

Claims 1, 2, 3, 5-15, and 24-41 are now pending in this application. Claims 18-21 stand withdrawn, as does the subject matter in claim 1 drawn to formula (VI).

II. Amendments to the Claims

Claims 18-20 have been amended herein to include the status identifier "Withdrawn." As noted by the Office, claims 18-20 were previously withdrawn by Applicant's Response to Restriction Requirement dated March 21, 2006. Applicant understands that, upon allowance of the generic claims directed to the non-withdrawn species (I), (II), (III), and (IV), Applicant will be entitled to rejoinder of the withdrawn subject matter. These amendments do not add any new matter to this application and should therefore be entered without objection or rejection.

III. Applicant's Summary of Interview

Applicant greatly appreciates Examiner Elhilo's time and participation in the telephonic interview with the Applicant's representatives, Thalia Warnement and Jeffrey Freeman, on May 21, 2007. Pursuant to MPEP § 713.04, Applicant provides the following substance of that interview.

Specifically, Applicant's representatives and the Examiner discussed the Declaration under 37 C.F.R. § 1.132 submitted on March 19, 2007. Applicant's representatives explained that, contrary to the assertion made in the present Office Action, the Declaration was commensurate in scope with the dyeing composition utilized in the closest prior art as-identified by the Examiner (U.S. Patent No. 5,931,973 to Malle

et al. ("Malle")). During the interview, it became clear that the Examiner believed that the comparative data presented in the Declaration was selected from among more than one reference of the prior art and not exclusively from Malle. Applicant's representatives explained that each of the direct dye compositions tested in the Declaration was explicitly disclosed by Malle -- Basic Green 1 at col. 15, lines 63-64; Basic Violet 10 at col. 16, line 7; and Basic Orange 14 at col. 16, lines 4-5. As noted in Applicant's Amendment filed March 19, 2007, some of the compounds were also disclosed in other cited references, namely Chassot and Kunz, but all three of the tested compounds were present in Malle. See p. 17, lines 3-8 of the March 19 Amendment.

Further, Applicant's representatives explained that Malle discloses a very long laundry list of dyes without providing any motivation or reasonable expectation of success to one of ordinary skill in the art to select the particular dyes in accordance with the pending claims. Moreover, the Declaration demonstrated that, unexpectedly, of the dyes tested, only those within the scope of the pending claims (e.g., Basic Green 1) resulted in a coloration within the presently claimed parameters. In contrast, of the tested dyes disclosed in Malle which are not in accordance with the pending claims (e.g., Basic Violet 10 and Basic Orange 14), none gave results within the coloration parameters of the present claims. Therefore, in Applicant's view, the Declaration demonstrates that the skilled artisan would have had no motivation or reasonable expectation of success to pick the particular dye compositions in accordance with the pending claims from among the long laundry list of dyes disclosed in Malle (as opposed

to other dyes in the same list which are not in accordance with the pending claims), to arrive at the instant invention.

Applicant's representatives emphasized that for this reason alone, the rejections under §103 should be withdrawn.

IV. Rejections under 35 U.S.C. § 103(a) of the Rapid Dyeing Process Claims

The Office has rejected claims 1-3, 24-37 and 39-40 under 35 U.S.C. § 103(a) as obvious over Malle in view of U.S. Patent No. 6,231,622 B1 to Chassot et al. ("Chassot"); claims 5-13 under 35 U.S.C. § 103(a) as obvious over Malle in view of Chassot and further in view of U.S. Patent No. 5,931,973 to Chan et al. ("Chan"); and claims 14 and 15 under 35 U.S.C. § 103(a) as obvious over Malle in view of Chassot and further in view of U.S. Published Application No. US 2004/0143910 A1 to Said et al. ("Said").

According to the Office, Malle teaches a process for dyeing hair comprising applying to the hair a dyeing composition comprising arylmethane direct dyes, specifically dyes of present formulas (I) and (III), for a leave-in time of 3 to 60 minutes before rinsing the hair. Office Action at 3. While the Office admits that Malle differs from the pending claims because it does not teach or suggest the claimed dying temperature or each of the claimed dying species, the Office asserts that the skilled artisan would have been motivated to combine the hair dyeing process of Malle with the temperature used in Chassot and the particular hair dyeing species chosen from among

the laundry lists of hair dyeing species disclosed in each of Chassot, Chan, and Said in order to arrive at the claimed invention. Office Action at 4-5.

Applicant disagrees with these rejections.

A) *Lack of Motivation to Combine or Reasonable Expectation of Success*

To establish a *prima facie* case of obviousness, the Office must show that one of ordinary skill in the art would have had some motivation to combine or modify the teachings of the references in an effort to achieve all of the limitations of the claimed invention, with a reasonable expectation of success in doing so (see MPEP § 2143). In Applicant's view, not only have these criteria not been met here, but the positions of the Office are all based on impermissible hindsight, which of course is an insufficient basis upon which to assert and maintain a proper *prima facie* case of obviousness. See MPEP § 2145(X)(A); see also KSR v. Teleflex (put correct cite, it's on p. 17 of the slip. op., citing *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 36 (1966) ("warning against a 'temptation to read into the prior art the teachings of the invention in issue'").

B) *Comparative Test Results and Unexpected Results*

In the Office Action, the Office admits that Malle does not teach or suggest that its dyeing compositions result in the specific CIELAB notation values as claimed. Office Action at 3. However, the Office asserts that one of ordinary skill in the art would expect the dyeing compositions of the prior art to have similar properties to those claimed, absent unexpected results (Office Action at 4-6), and that Applicant has not shown on the record that the claimed dyeing compositions demonstrate superior and unexpected results when applied to the hair over the dyeing compositions of the closest prior art of record (April 21, 2006, Office Action at 4).

Although Applicant believed (and still believes) that the arguments of record were sufficient, to further support those arguments, Applicant submitted a Declaration Under 37 C.F.R. §1.132 of Jean-Dominique BAZIN de BEZONS along with the Response filed March 19, 2007. A copy of that Declaration is attached hereto for the Office's convenience. The results of the tests described in the Declaration demonstrate that hair dyed with the presently claimed rapid dyeing process and using the dyeing compositions of the pending claims exhibited superior and unexpected results over hair dyed with the same process but using non-inventive compositions of the closest prior art. Although, in the present Office Action, the Examiner indicated his belief that the Declaration was not commensurate in scope with the closest prior art (Office Action at 6-7), the Examiner subsequently agreed with Applicant's representatives during the Telephonic Interview held on May 21, 2007, that his understanding of the scope of that Declaration had been mistaken. Therefore, Applicant presents herein another discussion of the results of that testing.

Applicant tested three dyes commensurate in scope with the dyes disclosed in the closest prior art (Malle) as-identified by the Examiner. Specifically, Applicant tested three of the different dyes disclosed among the laundry list of dyes in Malle, including one dye in accordance with the pending claims (Basic Green 1, disclosed in Malle at col. 15, lines 63-64) and two dyes not in accordance with the pending claims (Basic Violet 10, disclosed in Malle at col. 16, line 7; and Basic Orange 14, disclosed in Malle at col. 16, lines 4-5). Each of the three dyes was applied to natural hair containing 90% white fibers at room temperature, for a period of 4 minutes, and with a bath ratio of 10. Then, the locks were rinsed with clear water and dried with a hood hair dryer. After

drying, the locks were read in a Minolta CM 3600 colorimeter (10° angle, specular components excluded, illuminant D65) in the CIEL*a*b* system.

The colorimetric results showed that only the dye according to the pending claims (Basic Green 1) resulted in an L* value of less than 40 and a C* value of greater than 20, as required by each of the rapid dyeing process claims. In contrast, neither of the other two dyes (Basic Violet 10 and Basic Orange 14), both of which are not in accordance with the pending claims, resulted in the claimed CIELAB values.

Thus, none of the references of record recognizes the benefit of the selection of the particular dyes according to the present claims nor would they have provided the skilled artisan with any motivation to have selected those particular dyes from among the laundry list of dyes disclosed in their specifications, and certainly not with the reasonable expectation of successfully achieving the claimed L* and C* values when applied according to the claimed rapid dyeing process. Therefore, in view of the above, Applicant asserts that the Office has failed to establish a proper *prima facie* case of obviousness under MPEP § 2145(X)(A) and requests that the pending rejections be withdrawn.

V. Rejections under 35 U.S.C. § 103(a) of the Rapid Stripping Process Claims

A) Malle in view of Chassot

The Office has also continued to reject claims 34-37 and 39-40 under 35 U.S.C. § 103(a) as being unpatentable over Malle in view of Chassot. The Office does not separately argue claim 1 from claim 34, other than to say, in the Office Action mailed April 21, 2006, that the process of Malle comprises "applying to the hair a composition

comprising [an] oxidizing agent . . . simultaneously to the hair at a pH above 7. . . .”

April 21, 2006, Office Action at 3.

Applicant disagrees with the position taken by the Examiner. In particular, the disclosure in Malle to which the Office points relates to the simultaneous application to hair of a direct dye and an oxidizing agent to achieve dyeing in a lighter color than that of the hair to be dyed. This teaches away from the presently claimed invention, where present claim 34 relates to a process for stripping hair of color wherein (1) the hair has *previously* been dyed with a rapid dyeing process as described in the claim and (2) the stripping agent (oxidizing or reducing) is applied to the *previously dyed* hair for less than 5 minutes to remove color. This is completely different than adding an oxidizing agent to a hair dyeing composition at the time of dyeing. Neither Malle nor Chassot teach or disclose any type of stripping process for removing a previously applied dye. In other words, Malle and Chassot fail to teach all of the elements of the present claims, and indeed would guide one of ordinary skill away from the presently claimed process.

Accordingly, Malle cannot properly serve as the basis for an obviousness rejection under 35 U.S.C. § 103, and Chassot does not remedy those deficiencies. Further, there is no suggestion in either reference of a process that could result in hair that is dyed as rapidly and stripped of color as surprisingly rapidly as shown in the final table of the attached Declaration. Thus, Applicants respectfully request that this rejection be withdrawn.

B) Kunz

The Office has also rejected claims 34-36, 38, and 41 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,171,347 B1 to Kunz et al (“Kunz”). The Office

asserts that Kunz discloses a stripping process for hair dyed with a direct dye which includes applying to the dyed hair "a reductive composition. . . [wherein] the action time of the stripper . . . is from 5 to 60 minutes. . . " April 21, 2006, Office Action at 6-7. The Office admits that Kunz does not teach or disclose a stripping process during which the stripping compound is applied to the hair for less than 5 minutes, as is recited by independent claim 34, but argues that it would have been obvious to reduce the time of the process of Kunz because Kunz teaches that this process depends both on the color to be removed and on the temperature. *Id.* at 7. The Office concludes that the skilled artisan would have been motivated to reduce (optimize) the leave-in time to less than 5 minutes in order to get the desired results. *Id.* see also Final Office Action at 6. Applicant respectfully disagrees.

Claim 34 recites, *inter alia*, a process for the rapid stripping of human keratin fibers with a leave-in time of less than 5 minutes and wherein the human keratin fibers have previously been dyed with a composition which, when applied to keratinous fibers for a leave in-time of less than 5 minutes, results in a coloration of an L* value of less than 40 and a C* value of greater than 20, according to the CIE L*a*b* notation. As explained above, the present inventors have surprisingly discovered a process to rapidly strip dyed hairs that have previously been rapidly dyed according to the present invention. Yet, Kunz fails to disclose a process for the rapid stripping of human keratin fibers with a leave in time of less than 5 minutes, let alone the rapid stripping of human keratin fibers that have additionally previously been rapidly dyed according to the pending claims.

Moreover, Kunz in fact discloses a preferred leave-in time of its stripper of 15-30 minutes. *See* col. 10, lines 64-67. Contrary to the Examiner's assertion, the skilled artisan looking at Kunz simply would have had no motivation to reduce the stripping time to below 5 minutes even in light of routine optimization. In accordance with claim 34, the keratin fibers stripped according to the claimed process must have previously been dyed by the claimed rapid hair dyeing process resulting in a strong coloration. In general, the stronger the color imparted by a dye, the longer the skilled artisan would expect to have to treat the hair with the stripping compound in order to remove the dye. Thus, although Kunz teaches that the action time of the stripper depends on the color to be removed and the temperature, it appears that, in light of the strong color imparted by the dye to be removed as recited in claim 34, the skilled artisan would expect to have to increase the leave-in time of the stripper, not decrease it. Thus, not only has the Office failed to show any motivation to apply the stripping compound of Kunz for less than 5 minutes, but in addition, the skilled artisan would not have had any expectation of successfully stripping the hair of the dye if it was.

Finally, even if for the sake of argument, the Office could show such motivation, there is no suggestion in Kunz that its process could result in hair that is dyed so rapidly and stripped of color so rapidly as is shown in the final table of the attached Declaration.

In view of the above, the rejection over Kunz is in error and should be removed.

VI. Conclusion

In view of the foregoing arguments and amendments, Applicants respectfully submit that the present application is in condition for immediate allowance. If the

Examiner has any questions, he is requested to call Applicant's undersigned representative at (404) 653-6430.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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